



U.S. AIR FORCE

LEGAL GUARDIANSHIPS



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APPOINTMENT AS A LEGAL GUARDIAN

If you are considering becoming a legal guardian, there are some important facts that you should be aware of prior to starting the process. This pamphlet will explain the rights and responsibilities of a legal guardian in New Mexico, as well as the general process regarding how a person becomes a legal guardian. However, for more detailed information please ask to see a legal assistance attorney during the scheduled walk-in and/or appointment times.

KEY TERMS

A "legal guardian" means a person who has qualified to provide for the care, custody or control of the person of a minor or incapacitated person pursuant to a parental or court appointment.

A "ward" means a person for whom a guardian has been appointed.

WHAT ARE THE RESPONSIBILITIES OF A LEGAL GUARDIAN?

As set forth in New Mexico Statutory Chapter 45-5-209, the duties of a legal guardian are:

(1) To become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities and physical and mental health;

(2) To take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward;

(3) To apply any available money of the ward to the ward's current needs for support, care and education;

(4) To conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian, at least quarterly, shall pay to the conservator money of the ward to be conserved for the ward's future needs; and

(5) To report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the ward's welfare or as required by court rule.

WHAT ARE THE RIGHTS OF THE LEGAL GUARDIAN?

As set forth in New Mexico Statutory Chapter 45-5-209, a legal guardian has the right to:

(1) Receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship or custodianship and money or property of the ward paid;

(2) If consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, take custody of the person of the ward and establish the ward's place of abode within or without New Mexico;

(3) If no conservator for the estate of the ward has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward;

(4) Consent to medical or other professional care, treatment or advice for the ward without liability by reason of the consent for injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

(5) Consent to the marriage or adoption of the ward; and

(6) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

IS A LEGAL GUARDIAN JUST LIKE A PARENT?

Not always. Unless, the legal guardian is a parent (e.g. the ward has been declared mentally incompetent by a court), a legal guardian may only have some of the rights and responsibilities of a parent. For example, a parent has the general right to determine the education and religious upbringing of the child, whereas the legal guardian may only have these rights if the court order establishing legal guardianship so allows. In addition, a parent will be an heir of the child if the child dies without a will, whereas the legal guardian may not be. Furthermore, a parent automatically has the right to physical custody of the child (unless his or her rights have been terminated--i.e., by adoption), whereas the legal guardian may or may not have physical custody of the ward, depending upon the court order. Finally, a parent's rights and responsibilities will not terminate unless the parent terminates them voluntarily (i.e., by adoption), whereas a legal guardian's rights and responsibilities may be terminated by the guardian himself, the court, or by a ward who is 14 years of age or older.

HOW DO I PETITION FOR LEGAL GUARDIANSHIP IN NEW MEXICO?

In New Mexico, there are two ways to become a legal guardian: (1) by parental appointment or (2) upon appointment by the court. However, due to the complex nature of this area of the law, we recommend speaking with a legal assistance attorney or hiring a civilian attorney who is knowledgeable in the area of domestic relations law in order to assist you. If you desire a civilian attorney, please call the New Mexico State Bar Association's Lawyer Referral Service at 1-800-876-6227. For assistance in another state, please contact the State Bar Association of that state.

IF I BECOME A LEGAL GUARDIAN, HOW LONG WILL MY STATUS AS LEGAL GUARDIAN LAST?

It depends. If you are appointed by parental consent with a power of attorney form, your appointment lasts until the parent revokes your authority. If you are appointed by the court, then your appointment may last until you, the court, or the ward (if fourteen years of age or older) desires that the appointment be terminated.

IF I AM APPOINTED AS A LEGAL GUARDIAN, HOW DO I ENROLL THE CHILD INTO THE DEERS PROGRAM

We encourage you to speak directly to an MPF customer service representative for specific details. However, under AFI 36-3026, paragraph 4.13, the following basic eligibility criteria applies: An unmarried child, including a foster child or a child to whom a managing conservator has been designated, who has been placed in legal custody of a member or former member as a result of an order of a court of competent jurisdiction in the United States (or a territory or possession of the United States) for at least 12 consecutive months may be eligible for full ID card benefits and privileges if: (1) child is dependent on the member or former member for over one-half of his or her support, and (2) child resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation, and (3) is not a dependent of a member or former member under any other category.

WHERE CAN I LEARN MORE

The legal office is located at 101 S DL Ingram Blvd on base (Bldg 60), across from wing headquarters. Walk-in legal assistance is available on Mondays (1300-1530) and Wednesdays (0730-1000), and legal assistance appointments are available on Tuesdays (1000-1230) and Thursdays (1230-1530).